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June 17, 2014

Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, Colorado 80203

Dear Members of the Board:

In 2008, the Colorado Water Trust ("the Trust") was approached by a land and water right owner on the McKinley Ditch in Gunnison and Montrose Counties. His land was for sale in 35-acre lots and he was marketing his water rights separately. Although the Trust and the seller were unable to reach a deal at that time, the Trust later partnered with another conservation group, Western Rivers Conservancy, and in 2012 completed purchase of the land and water rights from Montrose Bank, as both the property and water rights were in foreclosure. These water rights were historically diverted from the Little Cimarron River, a tributary to the Gunnison River, and used to irrigate pasture grass. Today, if this proposed project is successful, those water rights will continue to irrigate those pastures, but they will also restore streamflows on the Little Cimarron.

Right now you are engaged in a statewide effort to develop a plan and tools to meet the needs of growth, agriculture, and the environment. One of the Trust's missions is to find new, market-based solutions that meet multiple needs. We believe this transaction meets your goals and ours: it recognizes the value of irrigated agriculture and proposes a permanent partial irrigation/partial instream flow split season use of the water; a groundbreaking model that could serve future agriculture and conservation partnerships in Colorado.

The Trust is pleased to offer to the CWCB an interest in the McKinley Ditch's senior water rights on the Little Cimarron River. The Trust asks the CWCB to formally consider this offer during the Board's July 2014 meeting.

The benefit from this water right is substantial: the CWCB holds one instream flow water right upstream of the McKinley headgate and a second right downstream on the Cimarron River. The Little Cimarron is almost completely dry below the McKinley headgate, even in water plentiful years. Obtaining this right for the instream flow program will cause no injury, will help re-water a dry portion of the stream, will preserve and improve the natural environment and will help to maintain the agricultural heritage of the area.

I will attend the CWCB meeting in July and will be prepared to describe the proposed transaction in more detail. We look forward to working with the CWCB to complete this transaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Beatie", is displayed on a light gray rectangular background.

Amy Beatie
Executive Director

Attachments

- CWT Offer Summary (*With attachments provided electronically*)
- Map
- Proposed Acquisition Agreement
- Proposed Grant of Flow Restoration Use Agreement



**Proposed Water Right Acquisition for Instream Flow Use
Pursuant to Section 37-92-102(3) CRS**

OFFER SUMMARY

**Colorado Water Trust Project No. 1004-0004
McKinley Ditch, CWT Shares
Little Cimarron River
Water Division 4, Montrose and Gunnison Counties**

Introduction

The Colorado Water Trust (Trust or CWT) is offering the Colorado Water Conservation Board (CWCB or Board) an opportunity to acquire an interest in senior water rights in Water Division 4 for instream flow use. These water rights could be used by CWCB to restore streamflows and preserve/improve the natural environment of two Wild Trout managed streams while also maintaining traditional agricultural values in Southwestern Colorado. The Little Cimarron River is a small stream that originates in the Big Blue Wilderness and flows north to the Cimarron River and then into the Gunnison River immediately downstream from Morrow Point Reservoir in Gunnison and Montrose Counties. The Board holds an instream flow (ISF) water right on over 16 miles of the upper Little Cimarron River to preserve a high quality fishery, but the ISF right ends at the Butte Ditch due to water availability limitations. Farther downstream, the Board also holds an instream flow water right on nearly 4 miles of the Cimarron River to preserve a rainbow and brown trout fishery. This transaction is unique because it proposes a permanent partial irrigation/partial instream flow split season use of the water, a model that could serve future agriculture and conservation partnerships in Colorado.

In 2008, the Trust was contacted by Mr. Shepardson, a local Gunnison basin landowner, offering to sell his 18.75% undivided interest in senior irrigation water rights decreed to the McKinley Ditch. He had subdivided his property and was marketing the land separately in 35 acre lots. In 2010, the Trust entered in to a partnership with Western Rivers Conservancy (WRC) to purchase Mr. Shepardson's shares in the McKinley Ditch water rights as well as the land historically irrigated by the water rights. In 2012, WRC completed the purchase of the land and water rights from Montrose Bank, as both the Shepardson property and the water rights were in foreclosure. In January 2014, the Trust acquired the water rights from WRC for \$500,000.00.

The Trust is now offering these shares in the McKinley Ditch water rights (CWT McKinley Shares) to CWCB for instream flow use to preserve and/or improve approximately 9 miles of the Cimarron and Little Cimarron Rivers.

The McKinley Ditch diverts water from the Little Cimarron River approximately 1.2 miles downstream from the Butte Ditch. The Little Cimarron River routinely dries up downstream of the McKinley Ditch headgate as a result of diversions by the ditch. Upstream of the Butte Ditch, the Little Cimarron River meets the biomass criteria for a Gold Medal Fishery and is managed by Colorado Parks and Wildlife (CPW) as a “Wild Trout” water.

Under this proposal, the Trust is offering to sell to CWCB a Grant of Flow Restoration Use providing the permanent right to use the CWT McKinley Shares for instream flow use. The purchase price for the Grant of Flow Restoration Use is \$145,640.00, and was determined through a valuation performed by WestWater Research. Under the proposed Grant, CWT would retain ownership of the water rights and CWCB would purchase a permanent contractual interest to use the CWT McKinley Shares for instream flow use.

The Trust intends to manage and coordinate all aspects of the irrigation use of the Shares, including the switch from irrigation to instream flow use. The Trust is also offering to act as an agent for CWCB for the administration and monitoring of instream flow use under the McKinley Shares. The Trust will provide an annual report to the Board regarding the use of the McKinley Shares each year as well as any actions taken by the Trust as the Board's agent. Additionally, the Trust will join with CWCB in filing the application to change the McKinley Shares to add instream flow use by CWCB. The Trust is proposing to take the lead in prosecuting the Water Court change case, but will consult with the Board's staff and attorneys throughout the proceedings and will obtain approval from the Board's staff and attorneys regarding any proposed stipulations or decrees. The full details of the Trust's proposal are included in the proposed Acquisition Agreement (Exhibit A) and the Grant of Flow Restoration Use agreement (Exhibit B).

In order to preserve agricultural uses while also restoring streamflow in the Little Cimarron River, this proposal contemplates several scenarios to use the CWT McKinley Shares. These scenarios include:

1. **Partial Season Irrigation Use** (split-season use) extending through either June or July, which allows for both early agricultural use and later instream flow use of the CWT McKinley Shares in one season. This is the preferred use of the CWT McKinley Shares.

2. **Full Season Irrigation Use** may occur if:
 - a. projected climatological conditions are such that there is no need to use the CWT McKinley Shares for instream flows; or
 - b. there is a land management issue that requires Full Season Irrigation, such as re-vegetation of the historically irrigated land; or
 - c. there is a pressing situation that requires Full Season Irrigation, including, but not limited to, establishing a new crop.

3. **Full Season Instream Flow Use** may occur if:
 - a. projected climatological conditions are such that there is a need for the use of the CWT McKinley Shares for Full Season Instream Flow Use; or
 - b. circumstances make irrigation impractical, including unavailability of a lessee for irrigation; or
 - c. there is a pressing situation that requires Full Season Instream Flow Use, including but not limited to unusually low projected stream flows.

During the 2014 irrigation season, the CWT McKinley Shares will not be used for irrigation. BBA and the Trust are conducting groundwater studies on the WRC Property which require water to be removed from the property and the land to be dried up for the 2014 irrigation season.

Water Rights Proposed for Acquisition

The water rights proposed for acquisition include 1.5 shares of the 8 shares decreed to the McKinley Ditch, conveyed to the Trust by Special Warranty Deed dated the 6th day of January, 2014 (Exhibit C). WRC also executed and recorded a Dry Up covenant for the property (Exhibit C1)

The McKinley Ditch diverts from the Little Cimarron River approximately 11.5 miles SSE of the town of Cimarron (Map 1). The Little Cimarron River is tributary to the Cimarron River, which flows north into the Gunnison River immediately downstream from Morrow Point Reservoir. The McKinley Ditch is decreed for a total of 31 cfs for irrigation use, of which the Trust owns an undivided 18.75% totaling 5.8125 cfs.

The water rights offered by the Colorado Water Trust and proposed for acquisition by CWCB for instream flow use are summarized in the following table. The decrees are attached as Exhibit D.

Table 1: McKinley Ditch Water Rights Offered by the Colorado Water Trust for ISF Use

DECREE NUMBER	STREAM PRIORITY	AMOUNT		ADJUD. DATE	APPROP. DATE
		Total Decreed	Colorado Water Trust Ownership (18.75%)		
CA1319	56	12.17 cfs	2.2819 cfs	3-28-1904	9-1-1886
CA1745	125	3.125 cfs	0.5859 cfs	5-8-1913	5-10-1905
CA1745	128	3.125 cfs	0.5859 cfs	5-8-1913	5-10-1906
CA4742	285	12.58 cfs	2.3588 cfs	4-21-1941	5-1-1912
TOTAL		31 cfs	5.8125 cfs		

Bishop Brogden Associates (BBA) has prepared a report that evaluates the historical use and historical return flows for the CWT McKinley Shares, describes water use under the four proposed operational scenarios, and includes proposed terms and conditions to prevent injury to other water rights. CWT McKinley Shares were used to flood irrigate 194.5 acres of pasture grass, and the average annual in-priority farm headgate deliveries to the property for the period 1974-2013 were 771.5 acre-feet. Historical return flows accrue to the Little Cimarron River approximately 3.3 miles downstream from the diversion structure. BBA determined the average annual in-priority consumptive use from the McKinley Shares to be 272.9 acre feet/year. The Preliminary Technical Report prepared for the Trust by BBA is attached as Exhibit E.

Attachments (Provided Electronically):

Map 1

Exhibit A – Proposed Acquisition Agreement

Exhibit B – Proposed Grant of Flow Restoration Use Agreement

Exhibit C – McKinley Ditch Deed

Exhibit C1 – Dry-up Covenant

Exhibit D – McKinley Ditch Decrees

Exhibit E – BBA Preliminary Technical Report